



[4310-W7-P]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AAK6006201 1562100DD AOR3030.999900]

National Environmental Policy Act: Implementing Procedures; Additions to Categorical Exclusions for Bureau of Indian Affairs (516 DM 10)

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: This notice announces proposed additions to the categorical exclusions (CE) included in the Departmental Manual 516 DM 10. The three proposed CEs pertain to limited timber harvesting on Indian lands.

DATES: Comments are due by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments to Marvin Keller, NEPA Coordinator – Bureau of Indian Affairs, 12220 Sunrise Valley Drive, Reston, VA 20191, email: Marv.Keller@bia.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Keller, NEPA Coordinator – Indian Affairs, (406) 247-7963 or (703) 390-6470.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) requires Federal agencies to consider the potential environmental consequences of their decisions before deciding whether and how to proceed. The Council on Environmental Quality (CEQ) encourages Federal agencies to use categorical exclusions (CE) to protect the environment more efficiently by reducing the resources spent analyzing proposals which generally do not have potentially significant

environmental impacts, thereby allowing those resources to be focused on proposals that may have significant environmental impacts. The appropriate use of categorical exclusions allow the NEPA review, in the absence of extraordinary circumstances that merit further consideration, to be concluded without preparing either an environmental assessment (EA) or an environmental impact statement (EIS) (40 CFR 1500.4(p) and 40 CFR 1508.4).

Harvesting timber on Indian lands, as defined in 25 CFR 163.1 allows landowners to realize value from lands held in trust for them by the Federal Government or subject to restrictions against alienation. The National Indian Forest Resources Management Act, and its implementing regulations, require the Secretary, with the participation of the landowners, to undertake forest land management activities on Indian forest lands, including the approval of timber harvests. As a result of the need for federal permits and contracts, such projects are federal actions that require compliance with the NEPA. The Bureau of Indian Affairs (BIA) has typically conducted NEPA reviews of actions associated with timber harvesting by preparing EAs. The addition of CEs to cover these three categories of small actions will allow for a more efficient NEPA review because those EAs resulted in findings of no significant impacts which were substantiated over time. The three proposed CEs were developed based on CEs currently used by the United States Forest Service (FS), as described in FS regulations 36 CFR 220, and adopted by the Bureau of Land Management (BLM), as described the Departmental Manual, 516 DM 11. The BIA relied on the experience of the FS and BLM and applied its expertise to benchmark these CEs and determined these are appropriate to establish as BIA CEs.

Proposed Categorical Exclusions

The Department of the Interior (DOI) proposes to add three CEs to the BIA chapter of the Departmental Manual 516 DM 10.5. The CEs are for limited timber harvest and cover the following actions: (1) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5

mile of temporary road construction; (2) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction; and (3) Commercial and non-commercial sanitation harvest to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. The intent of these CEs is to improve the efficiency of routine environmental review process for small scale timber projects on Indian land. Each proposed action must be reviewed for extraordinary circumstances that would preclude use of this categorical exclusion. The DOI list of extraordinary circumstances under which a normally excluded action would require further analysis and documentation in an EA or EIS is found at 43 CFR 46.215. If a proposed forest management project is within the activity described in one of these proposed CEs, then these 12 DOI listed “extraordinary circumstances” will be considered in the context of the proposed project to determine if they indicate the potential for effects that merit additional consideration in an EA or an EIS. If any of the DOI 12 extraordinary circumstances indicate such potential, the CE would not be used.

Analysis

The BIA forestry and environmental staff reviewed the NEPA procedures of both the BLM and the FS, who have similar forest management practices, which have similar environmental effects. The BIA, BLM, and FS often manage lands within the same landscape or watershed. Similar soils and climates on forest lands result in the agencies managing the same forest species. Each agency employs similar management policies with respect to meeting requirements for NEPA and other environmental statutes.

While the agencies have separate enabling legislation and missions, each requires that forest lands be managed according to sustained-yield and multiple use principles. The BIA has the additional responsibility of assisting their tribal partners in reaching their objectives of self-determination on Indian lands. As part of their land management responsibilities, the agencies

are further required to meet the requirements of environmental laws including NEPA, Clean Water Act, Clean Air Act, Endangered Species Act, and the National Historic Preservation Act when making decisions. Additionally, regulations for each agency require preparation of forest or land management plans designed to achieve the goals and objectives of environmental laws and regulations prior to initiating actions such as those contained in these proposed CEs. The similarities of the forest management practices of the BIA, BLM, and FS, make the adoption of the CEs a logical step to ensure consistency in NEPA compliance across the three agencies. The review for extraordinary circumstances, which BIA normally conducts for all CEs, ensures that measures would continue to be taken to identify and reduce any significant impacts.

The BIA review team examined previous analyses conducted by FS and BLM when they developed their CEs. The FS revised its NEPA procedures to include these three CEs on July 29, 2003. The FS codified its NEPA procedures on July 24, 2008, and the CEs are now included in 36 CFR Section 220.6. The BLM reviewed the FS administrative record that was relied upon when the FS changed its NEPA procedures and adopted the same three CEs on August 4, 2007.

The BLM and FS found that the three categories of actions covered by the CEs do not individually or cumulatively have significant effects on the human environment. The BLM and FS findings were predicated on data representing the expert judgment of the responsible officials who made the original findings and determinations for the 154 FS projects reviewed, the resource specialists who validated the predicted effects of the 154 reviewed activities after the projects were completed, and a belief that the profile of past timber harvest activities drawn from their database represented the agency's past practices and was indicative of their future activities. Following the CEQ guidance published in the *Federal Register* on December 6, 2010, the BIA analyzed the FS information, as well as the review conducted by BLM, and determined that based on the comparability of the actions

the expected effects of BIA forestry activities should be comparable to those of the FS and BLM.

Public Comments

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Departmental Manual must be received by the date listed in the DATES section of this notice at the location listed in the ADDRESSES section. Comments received after that date will be considered only to the extent practicable. Comments, including names and addresses of respondents, will be part of the public record and available for public review at the BIA address shown in the ADDRESSES section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Text of Proposed Addition to 516 DM 10

10.5 Categorical Exclusions

H. Forestry.

(11) Harvesting live trees not to exceed 70 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:

- a) Shall not include even-aged regeneration harvests or vegetation type conversions.
- b) May include incidental removal of trees for landings, skid trails, and road clearing.
- c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource

management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

- d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

- (a) Removing individual trees for sawlogs, specialty products, or fuelwood.
 - (b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.
- (12) Salvaging dead or dying trees not to exceed 250 acres, requiring no more than 0.5 mile of temporary road construction. Such activities:
- (a) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.
 - (b) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or Tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources; and

- (c) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.
- (d) For this CE, a dying tree is defined as a standing tree that has been severely damaged by forces such as fire, wind, ice, insects, or disease, such that in the judgment of an experienced forest professional or someone technically trained for the work, the tree is likely to die within a few years.

Examples include, but are not limited to:

- (a) Harvesting a portion of a stand damaged by a wind or ice event.
 - (b) Harvesting fire damaged trees.
- (13) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than 0.5 miles of temporary road construction. Such activities:
- (a) May include removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease; and
 - (b) May include incidental removal of live or dead trees for landings, skid trails, and road clearing.
 - (c) May include temporary roads which are defined as roads authorized by contract, permit, lease, other written authorization, or emergency operation not intended to be part of the BIA or tribal transportation systems and not necessary for long-term resource management. Temporary roads shall be designed to standards appropriate for the

intended uses, considering safety, cost of transportation, and impacts on land and resources; and

- (d) Shall require the treatment of temporary roads constructed or used so as to permit the reestablishment, by artificial or natural means, of vegetative cover on the roadway and areas where the vegetative cover was disturbed by the construction or use of the road, as necessary to minimize erosion from the disturbed area. Such treatment shall be designed to reestablish vegetative cover as soon as practicable, but at least within 10 years after the termination of the contract.

Examples include, but are not limited to:

- (a) Felling and harvesting trees infested with mountain pine beetles and immediately adjacent uninfested trees to control expanding spot infestations (a buffer); and
- (b) Removing or destroying trees infested or infected with a new exotic insect or disease, such as emerald ash borer, Asian longhorned beetle, or sudden oak death pathogen.

Dated: October 29, 2014.

Willie R. Taylor,
Director, Office of Environmental Policy and Compliance.

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